

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHAWN WEST,

Petitioner,

-v-

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

USPS SDN:	_____
DISP'NT:	_____
EL:	MANUALLY FILED
DC:	_____
DAS PLEA:	_____

Case No. 08-CV-6916 (KMK)(GAY)

ORDER ADOPTING
REPORT & RECOMMENDATION

KENNETH M. KARAS, District Judge:

On April 24, 1997, Shawn West ("Petitioner"), pleaded guilty to criminal possession of a forged instrument in the third degree, a Class A misdemeanor, under N.Y. Penal Law § 170.20. (Pet. for Writ of Habeas Corpus ("Pet.") 2 (Dkt. No. 1).) On August 7, 1997, Petitioner was sentenced to a term of six months' imprisonment. (*Id.*) Petitioner did not directly appeal this conviction, and served the entire imprisonment term.

On March 6, 2004, Petitioner moved to vacate the judgment pursuant to N.Y. Crim. Proc. Law § 440.10. (Resp't's Mem. of Law, Ex. 7 (Dkt. No. 8).) By order dated January 20, 2005, the Village Court of Port Chester denied Petitioner's Motion to Vacate Judgment. (*Id.*, Ex. 10.) Petitioner's subsequent Motion for Leave to Appeal was denied by the Appellate Term of the Supreme Court of the State of New York for the Ninth and Tenth Judicial Districts on September 12, 2007. (*Id.*, Ex. 11.)

On August 1, 2008, Petitioner filed a petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, claiming that his guilty plea was coerced, and that he was denied effective assistance of counsel. (Pet. 5, 7.)

The case was referred to the Honorable George A. Yanthis. (Dkt. No. 3.) On October 31, 2008, Magistrate Judge Yanthis held a telephone conference with the Parties, during which Petitioner was “afforded the opportunity to set forth additional argument in support of his petition,” but declined to do so. (Report & Recommendation 2 (Dkt. No. 10).) On November 16, 2010, Magistrate Judge Yanthis issued a Report and Recommendation (“R&R”) recommending that this Court dismiss the Petition in its entirety as untimely. Petitioner was given until December 3, 2010 to file an objection to the R&R, and did not file an objection.¹

When no objections are filed, the Court reviews an R&R on a dispositive motion for clear error. *See Whitfield v. Graham*, No. 10-CV-3038, 2011 WL 5994955, at *1 (S.D.N.Y. Nov. 29, 2011) (“When no objections to a report and recommendation are made, the Court may adopt the report if there is no clear error on the face of the record”) (citations omitted); *Eisenberg v. New Eng. Motor Freight, Inc.*, 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008) (same). The Court has reviewed the R&R and the Petition, and finding no error, clear or otherwise, adopts the R&R.

¹ After the R&R was issued by Magistrate Judge Yanthis, the Clerk’s Office mailed a copy to Petitioner at his last known address. The R&R was returned to the Clerk’s Office marked “Return to Sender, Not Deliverable as Addressed, Unable to Forward.” On December 8, 2010, the Clerk’s Office again sent the R&R to Petitioner’s last known address, and again the R&R was returned as undeliverable.

Service of the R&R was “complete upon mailing” to petitioner’s last known address, Fed. R. Civ. P. 5(b)(2)(C), and courts in similar situations have reviewed an R&R as having no objections, even though there was no indication that the petitioner received the R&R. *See Savinon v. Sears*, No. 09-CV-2529, 2012 WL 77848, at *1 (S.D.N.Y. Jan. 10, 2012) (adopting R&R with no objections, where R&R was mailed to petitioner’s last known address and was returned as undeliverable, and petitioner had not left a forwarding address); *see also Brown v. Pa. Dep’t of Corr.*, No. 10-CV-1194, 2011 WL 290217, at *1 (M.D. Pa. Jan. 25, 2011) (same).

Accordingly, it is hereby

ORDERED that the Report and Recommendation, dated November 16, 2010, is
ADOPTED in its entirety. It is further

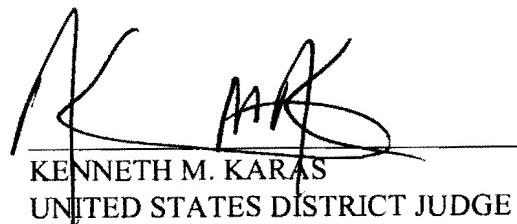
ORDERED that Petitioner's writ of habeas corpus is DISMISSED with prejudice. It is
further

ORDERED that because Petitioner has not made a substantial showing of the denial of a
constitutional right, a certificate of appealability will not issue, *see* 28 U.S.C. § 2253(c)(2);
Lucidore v. N.Y. State Div. of Parole, 209 F.3d 107, 111-12 (2d Cir. 2000), and the Court
certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken
in good faith. It is further

ORDERED that the Clerk of the Court is respectfully directed to enter a judgment in
favor of Respondent and to close this case.

SO ORDERED.

Dated: White Plains, New York
February 27, 2012



KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE

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Honorable George A. Yantpis
United States Magistrate Judge